IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEALNO.1137 OF 2005

Abhimanyu G.Phatak .. Appellant

Versus

Mangesh B.Wagale .. Respondent

Mr.S.G.Surana for appellant

None for respnodent

CORAM : P.V.KAKADE, J.

DATE : 4TH OCTOBER, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Raigad-Alibag dated 24.3.2005 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Alibag partly decreeing the suit with direction that the defendant shall hand over vacant and peaceful possession of the suit premises to the

plaintiff within specified time.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit against the defendant for possession of the suit premises and damages. It is the case of the plaintiff that he owns House No.189 at village Veshvi, Tal. Alibag. The house was dilapidated condition and it was protected by temporarily pillars. The house is having two rooms. The house is at a long distance from the village at lonely place. The plaintiff and his family members started to reside in the said house. The plaintiff required some company and therefore the defendant was allowed to reside in one room so as to give plaintiff company in the said lonely place. According to the plaintiff, the defendant was residing in the suit premises for about one year prior to the filing of the suit and kept the room locked and hence notice was issued to the defendant to vacate the premises dated 24.4.2000 and terminated his licence. But the defendant did not vacate the same and hence the suit came to be filed. The defendant contested the suit, inter alia,

denying the allegations made by the plaintiff. One of the contention sought to be raised by the defendant that he has made permanent construction in the property and therefore, there was irrevocable licence in his favour and as such the suit is not tenable and sought to be dismissed.

4. The learned trial court adjudicated the dispute on merits and came to the conclusion that the defendant failed to prove that the suit property was in his possession by virtue of irrevocable licence. It was further held that the plaintiff had proved that defendant was permissive licensee in the suit property without any consideration. It was further held that the defendant failed to prove that he had become owner of the suit property by adverse possession and had made permanent construction and as such the suit came to be decreed in above noted terms. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties came to the conclusion that the findings recorded by the trial court were legal and proper and dismissed the appeal. Hence the present appeal.

5. At the outset, it must be noted that there is absolutely no substantial question of law involved in this appeal. The only question sought to be raised by the learned counsel for the appellant is that the license is irrevocable in view of the construction made by the defendant. However, the judgments of both the courts below shows that they have properly appreciated the factual aspect of the evidence in proper perspective and there is no apparent error in coming to the conclusion that there was no irrevocable licence created in favour of the defendant and as such the suit was rightly decreed by both the courts below.

6. Under these circumstances, it is not a fit case to interfere in the second appeal and as such the appeal stands dismissed with no order as to costs. Consequently the Civil Application No.1624 of 2005 also stands dismissed with no order as to costs.

7. At this stage the learned counsel for the appellant sought indulgence of this court for seeking some time to vacate the premises. In view of the facts and circumstances, it is hereby directed that the appellant-defendant shall vacate the suit premises on or

before 31st December, 2005 on condition that he shall furnish Undertaking in this Court to that effect within two weeks from the date of this Order.